

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

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BOARD OF TRUSTEES, GLACIER
COUNTY SCHOOL DISTRICT NO. 50,
EAST GLACIER PARK, MONTANA,

Appellant,

VS.

TIA HENRIKSEN,

Respondent.

OSPI 270-97

DECISION AND ORDER

* * * * *

This is an appeal by East Glacier Park Elementary School District No. 50 [hereinafter "the Trustees" or "the District"] of an April 11, 1997, decision of acting Glacier County Superintendent of Schools, Gary Baden. The County Superintendent concluded that the District violated Tia Henriksen's right to Due Process when it expelled her on October 3, 1996, for the remainder of the 1996-1997 school year.

In 1996 Tia Henriksen was a twelve-year-old, sixth-grade student at East Glacier Park Elementary School. On September 24, 1996, the 10th day of the 1996-97 school year, Henriksen started a playground fight with a fourth-grade student during afternoon recess and then left the school grounds. The fourth-grader suffered multiple superficial abrasions and a bruise on her forehead (Joint Exhibit 7). The teacher-in-charge called the police, suspended Henriksen and sent notices to her guardians and to the Board that she was recommending expulsion.

The Board held a hearing on October 3, 1996, and expelled Henriksen. Henriksen appealed to the County Superintendent. A hearing was conducted on January 15, 1997. Henriksen, through her attorney, did not dispute that a fight had occurred but contended that under the District's progressive discipline policy adopted for school year 1996-97, fighting was classified in the Student Handbook as a "Type 2" violation and the penalty ranged from detention to 3 days suspension (Joint Exhibit 3). Henriksen also argued that the reliance by the teacher-in-charge on the "special circumstances clause" in the District's Policy Manual (Joint Exhibit 1) was an error and that the Student Handbook conflicted with the District's Policy.

On April 11, 1997, the Superintendent issued his decision, holding the expulsion was improper, and ordered Tia Henriksen readmitted. He held:

I do not condone Tia's conduct on the playground. I agree with the need to maintain safety on the school premises. However, I cannot overlook the School Board's violations of basic and fundamental precepts of fairness in order to affirm the expulsion and cessation of education to a twelve-year-old student. I conclude therefore, in light of the age of the student, the School's failure to previously address student conduct, the lack of supervision on school grounds and this, admittedly, being Tia's first offense in the 1996-1997 school year, that there is no rational relationship between Tia's offense and the discipline imposed (expulsion) that meets the constitutional due process and equal protection standards to which Tia is entitled.

Findings of Fact, Conclusions of Law and Order (4/11/97), page 10.

On April 23, 1997, Tia Henriksen's guardians filed an action in the Blackfeet Tribal Court seeking an order compelling the District to readmit Henriksen. A show cause hearing was held on May 1, 1997. During a recess, the parties reached an agreement regarding the terms and conditions upon which Henriksen would be readmitted to East Glacier Park Elementary School. Tia Henriksen was subsequently

reinstated in accordance with the parties' agreement. Judgment in a Civil Case, U.S. District Court, Great Falls Division, Case No. CV-97-061-GF (12/8/97), page 4.¹

On May 8, 1997, the District appealed to this Superintendent arguing that the process it followed to expel Henriksen is provided for by Montana statute and meets Constitutional standards. This office requested a copy of the record and, after reviewing numerous briefs from both parties, issues the following Order.

DECISION AND ORDER

The April 11, 1997, Order of the acting Glacier County Superintendent is AFFIRMED. Substantial credible evidence supports the acting County Superintendent's findings and his conclusions of law are correct as a matter of law.

STANDARD OF REVIEW

Findings of fact are reviewed to determine if they are supported by substantial, credible evidence in the record. The State Superintendent may not substitute her judgment for that of a county superintendent on the weight of the evidence. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." Wage Appeal v. Board of Personnel Appeals, 676 P.2d 194, 198, 208 Mont. 33, 40 (1984). Conclusions of law are reviewed to determine if the interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 803 P.2d 601, 603, 245 Mont. 470, 474 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 714 P.2d 151, 153, 220 Mont. 214, 217 (1986).

¹ On May 7, 1997, the School District filed an action for declaratory and injunctive relief in Federal Court challenging the authority of the Blackfeet Indian Tribe. The Blackfeet Tribal Court did not issue an order compelling Henriksen's readmittance but the District filed in Federal Court challenging the Tribal Court's assertion of jurisdiction.

MEMORANDUM OPINION

The District's 16 issues on appeal are:

1. Apart from erring by even raising the issue, the County Superintendent erroneously found that the District had been "inconsistent" in the manner in which it disciplined other students for fighting and incorrectly concluded that its implementation of its policy on fighting was inconsistent;
2. The County Superintendent erred in refusing to allow any evidence related to the comparative severity of the prior instances of "fighting" that served as the basis for his fact findings and legal conclusion that the District had been "inconsistent" in imposing discipline for "fighting";
3. The County Superintendent erred in refusing to consider Henriksen's disciplinary history in light of her counsel's arguments that she had been treated "inconsistently", that she had not been placed on notice of the potential consequences of her actions and that her violent assault of another student was only a "first time offense";
4. The County Superintendent made an erroneous finding and an incorrect conclusion of law regarding his determination that an alleged lack of supervision provided an excuse for Henriksen's violent assault of a younger, smaller student;
5. The County Superintendent erroneously found that the "notebook incident" was still "simmering" and that the District staff should have "suspected" trouble between Henriksen and the other student;
6. The County Superintendent erred in his finding and conclusion that this was the "first attempt" to address Henriksen's misbehavior;
7. The County Superintendent erred in his findings and conclusion related to the implementation and application of the "Rollback" policy for student discipline;
8. The County Superintendent erred in his finding that "Tia's relationship with other students, including the victim, is complicated by historical family disputes";
9. The County Superintendent erred in finding that Henriksen was not in school for 10 days;
10. The County Superintendent made erroneous fact findings regarding the degree to which Henriksen and her guardians were placed on "notice" of the School District's discipline policies;
11. The County Superintendent made erroneous fact findings that the School District staff was "confused" regarding the disciplinary policies;

12. The County Superintendent made erroneous fact findings and incorrect legal conclusions that the disciplinary policies were vague;
13. The County Superintendent made erroneously findings that the student handbook and board policy provisions regarding discipline were contradictory;
14. The County Superintendent made incorrect legal conclusions regarding the clear language of the disciplinary language contained in the Student Handbook;
15. The County Superintendent incorrectly concluded that Henriksen was denied any procedural or due process rights afforded her by the Montana or U.S. Constitutions; and
16. The County Superintendent's interjection of special education issues into the case was improper.

Reply Brief of Appellant, OSPI No. 270-97, 8/29/97, pages 3-4.

For purposes of this opinion, these 16 issues will be grouped into two – is there substantial credible evidence to support the County Superintendent's findings, and are his conclusions of law correct as a matter of law.

A. Is there substantial credible evidence to support the County Superintendent's findings.

Substantial credible evidence supports the County Superintendent's ultimate finding that:

15. The Student Handbook provides a table of offenses and penalties on page 14. School officials' testimony repeatedly admitted that the penalty for a first time fight is detention. The fight of September 24, 1996 was Tia's first fight for the 1996-1997 school year. The School Board has statutory and constitutional discretion in adopting a policy that addresses what inappropriate behavior might warrant expulsion. The East Glacier School Board's adoption of the Student Handbook identified the penalty and consequence Tia would face - detention.

County Superintendent's Findings of Facts, Conclusions of Law and Order (4/11/97), page 9.

At the time of the expulsion, Henriksen was a twelve-year-old, sixth-grade student at East Glacier Elementary School. She was expelled following an incident on September 24, 1996, involving a fourth-grade student. "On September 24, 1996, [she] was involved in an altercation with [a fourth-grade student] on the playground during afternoon recess. As a result of that altercation, [the fourth-grade student] suffered injuries requiring first aid and medical attention." (Finding of Fact 7). The County Superintendent labeled this a "stipulated fact" but a review of the record does not show that the parties stipulated to any facts. Neither party disputed the term "stipulated fact" however, and, for purposes of this review, all facts labeled "stipulated" will be considered undisputed.

Henriksen and the fourth-grade student were in a combined fourth/fifth/sixth-grade class. On the day of the fight her teacher corrected Henriksen for stealing a notebook belonging to the brother of the fourth-grader. At the recess following this incident, Henriksen hit the fourth-grader without provocation in an unsupervised area of the playground.

Following the incident, the teacher-in-charge suspended Henriksen and sent notices to Henriksen's guardian and to the Board that she was recommending expulsion. In the September 27, 1996, letter to the Board, the teacher-in-charge stated:

1. This letter is to inform you of an incident that occurred on 9/24/96. During this incident Tia Henriksen attacked another female student (4th grader) outside the west door of the school as the students were going out to recess. According to all witnesses this was an unprovoked attack.

Tia is charged with the following :

Type 2 violation, fighting
Type 2 violation, stealing
Defiance to authority
Disruptive conduct
Verbal abuse

Although this is her first offense for the 96-97 school year, due to the severity of this incident, I have chosen to invoke the special circumstances clause (722.6 C). Tia will be suspended from school until the Board of Trustees has met to decide the appropriate discipline action. Officer Maurice Redhorn was called because Tia chose to leave the school grounds. This action needed to be reported in accordance to Montana School Law. (Emphasis added.)

Joint Exhibit 12, Letter to East Glacier School Board (9/27/96).

This document was attached to the September 27, 1996, notice the Board sent to Henriksen's guardians (Joint Exhibit 13). Section 722.6, Special Circumstances, of the Board Policy Manual states:

- A. Serious violation may result in an expulsion hearing with the Board regardless of the number of offenses.
- B. Any alleged illegal act will be reported to the appropriate legal authorities.
- C. The Administration views this outline as a guideline and reserves the right to step outside these guidelines when circumstances dictate.

Joint Exhibit 1, page 7-17.

Tia Henriksen was expelled based on the September 24, 1996, incident. That is what the District notified her guardians of and, based on this notice, the County Superintendent and the Respondent are correct that Henriksen's guardians were not given notice that her conduct in the fourth and fifth grades would also be the basis for her expulsion. The only issue correctly before the County Superintendent was whether Henriksen's conduct on September 24, 1996, merited expulsion, and that's the only issue that will be reviewed here and only evidence related to that fight is relevant on appeal.

B. the Order is Correct as a Matter of Law

Page 14 of the 1996-96 Student Hand Book states:

EAST GLACIER PARK SCHOOL DISCIPLINE ACTION GUIDELINES

	TYPE 1	TYPE 2	TYPE 3	TYPE 4
	attendance truancy	fighting stealing insubordination vandalism profanity harassment	possession/ use/dealing with tobacco/ alcohol or drugs	weapons possession
1 st offense	detention & notify parents	detention or administers discretion	suspension for 1 day notify parents and law agency	suspension with recom- mendation for expulsion
2 nd offense	suspension for 1 to 2 days notify parents	suspension for 2 days notify parents	suspension for 2 days minimum notify parents and law agency	
3 rd offense	suspension for 3 days notify parents recommend expulsion	suspension for 3 days notify parents recommend expulsion	suspension for 3 days minimum notify parents and law agency recommend expulsion	

Joint Exhibit 3, Student Handbook 1996-97, page 14.

The notice Henriksen's guardians received (Joint Exhibit 13, quoted above) gave them notice that the problems were fighting, stealing, defiance of authority, disruptive conduct and verbal abuse. All of this conduct is punishable in the first offense by "detention or administers discretion." The notice goes on to say, "Although this is her first offense of the 96-97 school year, due to the severity of this incident, I have chosen to invoke the special circumstances clause (722.6 C)."

Nothing in the September 27, 1996, letter gave Henriksen's guardians notice that conduct from prior years was at issue. Based on the notice to the guardians, expulsion was being considered "due to the severity of this incident." On appeal the County Superintendent did not find the incident severe enough to merit denying a twelve-year-

old, sixth-grade student an education. The County Superintendent is the trier of fact and his findings will not be set aside if supported by substantial credible evidence. Substantial credible evidence supports his findings about the severity of the incident.

Due Process guaranteed Tia Henriksen and her guardians a right to notice prior to the hearing of the grounds for her expulsion. The amount of process that a citizen is entitled to in dealings with the government depends on the importance of the citizen's interest at stake. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct 893 (1976). The interest at stake for Tia Henriksen was her right to a public education. Education is an explicitly guaranteed Constitutional right in Montana. In Kaptein v. Conrad School District, 54 St. Rep. 106, 931 P.2d 1311 (1997), the Montana Supreme Court wrote:

The United States Constitution, unlike the Montana Constitution, does not explicitly or implicitly guarantee a right to education.

Kaptein at 1313.

Arguably, the right to public education is the most significant claim on government that a minor possesses. A student and his or her parents are entitled to significant procedural protections before a school district can take away that right. At a minimum, they have a right to clear, accurate, written notice of what school district policy was violated, notice of what evidence of the violation exists, notice of what procedure the school district intends to follow in conducting the hearing, and sufficient time to meaningfully prepare for the hearing.

Tia Henriksen's guardians were given notice that the teacher-in-charge was recommending expulsion "due to the severity of this [the September 24, 1996] incident."

The District could not change the reason on appeal and the County Superintendent did not find the incident to be severe enough to merit expulsion. There is no error of law in the decision.

CONCLUSION

The County Superintendent's Order is AFFIRMED.

DATED this _____ day of April, 1999.

NANCY KEENAN

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this _____ day of April, 1999, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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